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OFFICE OF PETITIONS

In re Application of :
Neuse al. :
Application No. 09/753,192 : DECISION DISMISSING
Filed: 2 January, 2001 : PETITION
Attorney Docket No. 044601.0164 :

This is a decision in reference to the "Request for Corrected Filing Date" filed on 25 April, 2001, which is being treated as a petition under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of 30 December, 2000, rather than the presently accorded filing date of 2 January, 2001.

The petition is dismissed.

Petitioners assert that the application was deposited in Express Mail service on 30 December, 2000. In support, the petition is accompanied by a copy of Express Mail receipt No. EL597197443US, showing a USPS postmark dated 30 December, 2000.

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under 37 CFR 1.10 that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the papers or fees that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition lacks the showing required by item (3).

In this case, a review of the official file reveals that no Express Mail label number was placed on the application papers prior to the original mailing. The placement of the Express Mail label number on a paper ties the paper to a single, identifiable Express Mail receipt. Where questions are later raised concerning the filing date of the paper, the PTO may require the applicant to supply a copy of the Express Mail receipt identified on the paper in order to verify the mailing date. Where no Express Mail label number is identified on a paper, the PTO has no way of independently associating the paper with any particular Express Mail receipt. As such, the PTO has nothing in its control from the filing date of the papers to independently corroborate the applicants' assertion that the application was filed on 30 December, 2000.

Petitioners should also note that the requirement of 37 CFR 1.10(c) for a certificate of mailing by "Express Mail" has been waived by the Commissioner.¹

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 2 January, 2001.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.



Douglas I. Wood
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹See 1174 O.G. Pat. Of. 92 (May 16, 1995).